

MOTION TO DISMISS

Willsyr Communications, Limited Partnership ("Willsyr"), by its counsel, hereby submits this "Motion to Dismiss." On June 13, 2001, Sutton Radiocasting Corporation ("SRC"), licensee of Station WPEK (FM), Greenwood, South Carolina, filed a "Petition for Reconsideration and/or Clarification" with respect to the Commission's decision in Memorandum Opinion and Order, FCC 01-129, rel. May 25, 2001. That decision granted the application of Liberty Productions, A Limited Partnership ("Liberty") and denied the application of Willsyr.

On June 25, 2001, Willsyr timely filed a notice of appeal with the U.S. Court of Appeals for the D.C. Circuit as to the denial of its application (Case No. 01-1283). Willsyr's notice of appeal is being held in abeyance by the D.C. Circuit pending the Commission's resolution of SRC's petition for reconsideration.

Willsyr requests the dismissal with prejudice of the petition for reconsideration because SRC concedes in its petition to not actually being "aggrieved," and therefore lacks standing to participate in this proceeding. In support of its motion to dismiss, Willsyr submits the following.

SRC has not previously participated in any respect in the Biltmore Forest proceeding. It has pending an application (BPH-20010117ACJ) to move its tower site in order to implement a change of city of license to Mauldin, South Carolina.

SRC claims standing in the Biltmore Forest proceeding because it contends that Liberty's proposed operation on the Biltmore

Forest allocation as a Class C3 might impact in the future its move to Mauldin, South Carolina.

However, SRC's petition for reconsideration, at p. 8, n. 10, concedes that Liberty's amended tower site to operate as a Class C3, as approved by the Commission, is fully-spaced to its tower site pursuant to its application (BPH-20010117ACJ) to serve Mauldin, South Carolina. SRC's actual concern in its petition for reconsideration is merely hypothetical --- that the Commission has not yet changed the reference coordinates for the Biltmore Forest allocation to reflect Liberty's operation at its authorized tower site as a Class C3.

Accordingly, SRC's petition for reconsideration must be dismissed. It has admitted that there is no short-spacing with its pending application with respect to Liberty's authorized tower site to operate as a Class C3. Thus, there is no legal or other impediment caused by Liberty as to SRC constructing and operating at its proposed tower site in Mauldin, South Carolina.

Most importantly, SRC has failed to demonstrate that it has no other recourse at the Commission to resolve its hypothetical concern that the Biltmore Forest reference coordinates have not yet been changed to reflect Liberty's authorized tower site and operation as a Class C3. Presumably, such reference coordinates would be routinely changed by the Mass Media Bureau staff at the time that Liberty commences operation.

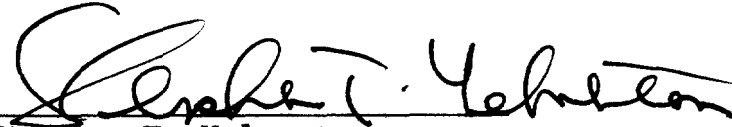
Because SRC has conceded to having no actual or real "grievance," it thus has no standing to file and its petition for

reconsideration must be dismissed forthwith. SRC's petition is unduly delaying the consideration of Willsyr's notice of appeal by the D.C. Circuit and the final resolution of the Biltmore Forest proceeding, which has been pending before the Commission for over 14 years.

WHEREFORE, in view of the foregoing, SRC's petition for reconsideration must be dismissed because it has conceded that it would not be adversely affected by Liberty's operation as a Class C3 at its authorized tower site. Thus, SRC is not "aggrieved" for purposes of standing. 1/ Both SRC and Liberty could construct and operate their proposed facilities with no conflict to each other.

Respectfully submitted,

WILLSYR COMMUNICATIONS, LIMITED PARTNERSHIP

By: 

Stephen T. Yelverton
Yelverton Law Firm, P.L.L.C.
601 Pennsylvania Ave., N.W.
Suite 900 South
Washington, D.C. 20004
Tel. 202-329-4200

July 9, 2001

1/ The Commission might consider investigating whether SRC has filed a "strike" petition.

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney, do hereby certify that on this 9th day of July, 2001, I have caused to be hand-delivered or mailed, U.S. Mail, first-class, postage prepaid, a copy of the foregoing "Motion to Dismiss" to the following:

John I. Riffer, Esq.*
Associate General Counsel
Federal Communications Commission
Washington, D.C. 20554

James Shook, Esq.*
Enforcement Bureau
Hearing Division
Federal Communications Commission
Washington, D.C. 20554

Michael Wagner*
Room 2-A523
Mass Media Bureau
Audio Services Division
Federal Communications Commission
Washington, DC 20554

Timothy Brady, Esq.
P.O. Box 71309
Newnan, GA 30271-1309

Donald J. Evans, Esq.
Fletcher, Heald & Hildreth
1300 N. 17th St., 11th Fl.
Arlington, VA 22209

Lee J. Peltzman, Esq.
Shainis & Peltzman
1850 M St., N.W., Suite 240
Washington, D.C. 20036

Stephen C. Leckar, Esq.
Butera & Andrews
Suite 500
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Robert L. Thompson, Esq.
Thiemann, Aitken & Vohra, L.L.C.
908 King St., Suite 300
Alexandria, VA 22314



Stephen T. Yelverton

* Hand Delivery